

surveys, penalties up to \$4.4 billion, and an amendment to go to \$7.7 billion.

Does my colleague from Arizona realize there is a difference between \$7.7 billion and \$2 billion? and that \$5.5 of this new penalty is product-specific? and the industry did not agree to a product-specific penalty? These provisions were not in the industry settlement, as I am reading it right now.

Mr. GRAMM. Will the Senator yield?

Mr. MCCAIN. Did you ask me a question?

Mr. NICKLES. No.

Mr. MCCAIN. You didn't.

Mr. GRAMM. Will the Senator not agree with me that whether the tobacco companies agreed to it or not, that article I of the Constitution gives the Congress the power to tax? and that we ought not to be delegating that power to a poll?

Mr. NICKLES. I agree totally. And I also tell my colleague and friend from Texas, I wasn't part of the tobacco companies' deal. I am part of the Finance Committee. And I think if we are going to legislate on taxes, we ought to do it right. This is not the right way to tax.

I will also tell my colleague from Texas, I have heard people say the tobacco industry is confident they can challenge these look-back assessments and win in court and have it thrown out as unconstitutional. Regardless of the constitutional argument, I say this is a crummy way to tax. I don't want to give the Secretary of the Treasury the authority to conduct a poll and then determine that the poll is accurate, proper, correct for purposes of this act, and be able to make assessments. Under the agreement the tobacco companies agreed to, it was up to \$2 billion. Under the bill that came out of the Commerce Committee, it was \$3.96 billion. Under the bill the administration wrote and introduced on Monday, it came up to \$4.4 billion. And on the amendment we have pending now, it is \$7.7 billion, also indexed for inflation.

The industry did not sign off on any \$7.7 billion look-back.

Mr. GRAMM. Will the Senator yield further?

Mr. NICKLES. Yes.

Mr. GRAMM. Just two questions. No. 1, you are not here to represent the industry, are you?

Mr. NICKLES. No, sir. I could care less—

Mr. GRAMM. Second, when you put your hand on the Bible and you swore to uphold the Constitution of the United States against all enemies, foreign and domestic, you were not saying, well, I'll uphold the Constitution and article I, the power of Congress to tax, only in those cases where the tobacco companies didn't agree to let a pollster raise taxes, did you?

Mr. NICKLES. The Senator is absolutely right.

Mr. MCCAIN. A "pollster"?

Mr. NICKLES. I got on the Finance Committee because I did not like the

way our tax system was structured. I want to work with our colleagues from Mississippi and Texas, to take the Tax Code and rewrite it and come up with something that is fair, flat, and simple. This is tobacco bill just the opposite. This is a mess. We could clean this bill up a lot if we went through the conventional process, if we had the Finance Committee mark up this bill on the tax side and call a tax a tax.

Instead, we have this unbelievably complicated system, and the look-back is maybe the most complicated. Delegating to the Secretary of the Treasury to take a poll, and then, if they don't meet the targets that we set, we are going to assess them billions of dollars, up to \$7 billion or \$8 billion, I find to be ludicrous. It doesn't make sense. It is not a good way to legislate.

That is the reason that the Commerce Committee doesn't have taxation power, in the Senate. In the Senate, the Finance Committee has the power to raise taxes.

Mr. MCCAIN. Will the Senator yield for a question?

Mr. NICKLES. And not the attorneys general and not the Commerce Committee.

I will be happy to yield.

Mr. MCCAIN. I thought the Finance Committee did take up this issue and ended up raising taxes, and doing all kinds of other havoc to it in 24 hours. I wonder what they would have done in 72.

Mr. NICKLES. I will tell my friend and colleague, the Finance Committee did consider this bill for 24 hours. I didn't support their \$1.50 tax increase, but I think their \$1.50 tax increase is a lot more honest, is a lot more plain, a lot more doable. We have excise taxes on tobacco today of 24 cents. Congress last year, when we passed the kid-care bill, increased that another 15 cents. So, tobacco taxes are going to 39 cents already in present law.

People say that the Commerce Committee bill, the administration bill, increases that another dollar and a dime. That takes the tax to \$1.49. But they do not call it a tax, they call it a fee. So we are telling everybody who is in this industry—and we have wholesalers and distributors and so on—that the tax is \$1.49 and it is increasing. But that bill, the bill that we have before us, doesn't say anything about a dollar and a dime. It says put all these billions of dollars into a fund. That is not very workable. It is not very legitimate. I think we should have the committees of jurisdiction take this bill.

The Finance Committee did take the bill, but unfortunately the Commerce Committee and the administration looked at our changes, and they just ignored them. They dropped the changes that the Finance Committee made.

I resent having the Commerce Committee write the tax portions of this bill as well as I resent the Commerce Committee writing the ag portions of the bill. And I think those are two of

the more contentious and two of the more difficult things that we have to deal with. The committee that marked it up didn't have, in my opinion, the taxation expertise, they didn't follow the same taxation procedures that we have on every other excise tax in history. And, frankly, I think the Agriculture Committee should have written that instead of the Commerce Committee as well.

The PRESIDING OFFICER. The majority leader.

Mr. LOTT. Is the Senator—has the Senator from Oklahoma completed his remarks? Were you through with your remarks?

Mr. NICKLES. Yes.

MORNING BUSINESS

Mr. LOTT. Mr. President, I know we are having a lot of fun here, but for the information of all Senators, there will be no further votes this evening. The Senate has tried to work out an agreement that would resolve the impasse that we have right now parliamentary, and with regard to the substance of those amendments, but we have not been able to get that worked out yet. There are very strong feelings on both sides of the amendments that are pending, so I can understand that. So, since we haven't worked out an agreement, I now ask there be a period for the transaction of morning business with Senators permitted to speak for up to 10 minutes each.

Mr. GRAMM. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Texas reserves the right to object.

Mr. GRAMM. Would it be possible for us to just have a short final statement on this issue? Or would you prefer we do it—

Mr. LOTT. I would prefer you do it in morning business, because if you had a short final statement, there would need to be a short final reaction. I see the Senator from Massachusetts is anxious to get recognition.

Mr. GRAMM. In that case, it is not worth it.

Mr. LOTT. You can continue in morning business.

Mr. GRAMM. Thank you.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, tomorrow we will convene at 9:30, and there will be 1 hour for morning business, and then we will begin consideration of two items tomorrow, calendar No. 299, H.R. 2709, relative to Iran sanctions, with a total of 3 hours for debate. We already entered into an agreement back before the Easter recess as to how this issue would be considered, on or before May 22. So we will have this issue up tomorrow. There could be an amendment offered by Senator LEVIN. But we hope to get that up tomorrow.

I won't even announce at this moment exactly which one of these two bills will come first, because we will need to see, for instance, if the ISTEA highway and infrastructure bill is ready to go. As soon as we get it, we want to take that up. But it will be the Iran sanctions issue, and then we will consider and dispose of the ISTEA conference report. So, votes will occur tomorrow, probably at least one, maybe two or three. It will depend on how these issues develop.

Some people are saying, Will the ISTEA conference be completed? I am told by the leaders that they will be able to complete it tonight. They may need a little extra time in the morning to make sure that Senators who are affected one way or the other have been briefed as to exactly what is in it, but they know that we need to complete this legislation before we go home for Memorial Day recess, and we should be committed to get that done.

With that, I yield the floor and the morning business would be in order.

Mr. FORD. Will the majority leader yield?

Mr. LOTT. I am happy to.

Mr. FORD. I approve of what you have been doing. I think you have a hard job and you have done well. One thing that bothers me—you come to Kentucky to see friends and family one of these days. There are a lot of holds here and a lot of people are caught up in holds that have nothing to do with the disagreement among Senators. Next week, the Uranium Enrichment Corporation will make a final decision on whether they go public or whether they go sell to an individual. And we have one member who needs to be on that. She has been held up 4 months now, and that vote and that expertise, for 4 years, needs to be on that board.

I hope that somewhere—it is on our side as well—but when I get our side worked out, then it comes back on that side.

Mr. LOTT. If I can say to the Senator from Kentucky, I know he is interested in this nominee. Over a week ago, I believe, we had it cleared.

Mr. FORD. We did until we got problems on this side.

Mr. LOTT. Then I thought we worked it out again, and another problem popped up.

Mr. FORD. Oh, yes.

Mr. LOTT. But I think we will take another run at it tomorrow and see if we can maybe work it out.

Mr. FORD. The only reason I am asking is, we have the budget process. The Senator from New Mexico, Senator DOMENICI, has worked hard on this. It should not be jammed up because of a hold on the Senate floor for an individual who has nothing to do with it, and it is jeopardizing the budget process, because funds are in there as it relates to the sale of this item.

So I just—I plead with you, if you can, and I will do the best on my side, and if somehow, tomorrow, we will not be back, able to do it—and I do not

want a recess appointment. It will all be over before the year expires. I don't like to do recess appointments.

Mr. LOTT. I will say to the Senator from Kentucky, I realize Margaret Greene—

Mr. FORD. Yes.

Mr. LOTT. Needs to be released. We also have worked out, I believe, an agreement that involves releasing Mr. Barry for the Department of the Interior and Mary Anne Sullivan to be counsel at the Department of Energy. We would like to move all three of those.

Mr. FORD. I agree with that, and I will try to help. My pleadings have fallen on hard times.

Mr. LOTT. We will work on it tonight and tomorrow. Keep working on it.

Mr. FORD. I appreciate it. I want you to know—I want everybody to know—we are trying to operate in an efficient manner, and other things are jeopardizing the ability to do it in an efficient manner.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I thank the Presiding Officer. I will proceed in morning business.

NATIONAL TOBACCO POLICY AND YOUTH SMOKING REDUCTION ACT

Mr. MCCAIN. Mr. President, I need to respond, of course, to the Senator from Oklahoma who somehow now regrets or complains about the fact that this legislation went through the Commerce Committee. My understanding is, unless I am having some mental lapse, that the decision was made by the leadership to move the bill through the Commerce Committee.

My understanding is that was the instruction of the distinguished assistant majority leader and the other members of the leadership, to move it through the Commerce Committee, because it was clear it was not going to go through the other committees. Now the Senator from Oklahoma seems terribly distraught that it didn't go through the other committees when he was the major person to move it through the Commerce Committee.

Mr. NICKLES. May I answer to that?

Mr. MCCAIN. I will be glad to yield, if the Senator from Oklahoma has a short question, because we are operating—

Mr. NICKLES. I don't have a question. I want to respond.

Mr. MCCAIN. If you don't have a question, then I suggest you wait until the expiration of my time.

The second point is that the Finance Committee did insist, insist, insist and got this bill, and they came up with a result that the Senator from Oklahoma didn't like. There were amendments pending, that is my understanding, in the Finance Committee—I was watching on C-SPAN—that would have done even more damage to the legislation,

at least from the viewpoint of the Senator from Oklahoma, who thinks that the bill is too encompassing, too large a tax increase, et cetera, which he has spoken at length about on this floor today. I am curious about what would have happened if the Finance Committee had kept the bill even longer.

As far as the Agriculture Committee is concerned, the Agriculture Committee bill is in the bill as a result of the majority leader inserting it. The Senate will have its way on that.

But I want to come back to the fundamental issue of the look-back provision. Mr. President, I didn't invent the look-back provision. It wasn't my idea. I have very talented staff and advisers and friends. The look-back provision came from the agreement that was entered into by the attorneys general of the 40 States and the industry.

Have they changed? Yes, the look-back provisions have changed. Should they be changed back? Should I support the Durbin amendment? No, because I think it makes it worse. But the look-back provision concept was generated by the belief of every public health group in America that you can't trust the tobacco companies.

Perhaps the Senator from Oklahoma and the Senator from New Mexico and others trust the tobacco companies and believe that they will really try to reduce teen smoking. They may do that, but most observers believe that after commitment after commitment and promise after promise and lying to Congress about the fact of whether they enticed kids to smoke or not, the fact is we found out they did. So the look-back provision, I inform my colleagues, does not mean you have any connection with the tobacco industry, but you ignore the fact that the tobacco industry can't be trusted, and unless there are penalties involved, then the industry will not do what they say they will do, because they have already said they would try not to entice kids to smoke, and they did. That is the reason for the look-back provision.

Philosophically, that may not be something that is acceptable to the Senator from Oklahoma, the Senator from Texas, or the Senator from New Mexico. But the reality is that is the view of every public health organization in America. Every living—every living—Surgeon General in America today has said you have to have these provisions in the legislation if you want to attack the issue of kids smoking.

That is the view—and we have the letter, I have the letter from the Surgeons General, every Surgeon General since 1973. Perhaps those who oppose this know more than they do. I don't know, I don't know more than they do.

With startling candor, Dr. Claude Teague set forth the plain facts about the addictive nature of nicotine in his chilling 1972 internal memorandum discussing the crucial role of nicotine. He said:

Happily for the tobacco industry, nicotine is both habituating and unique in its variety